Supreme Court, U.S.
FILED

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No. 93-

In The

Supreme Court of the United States

October Term, 1993

BONNIE L. HICKLE,

Petitioner,

v.

AMERICAN SERVICE CORPORATION OF SOUTH CAROLINA,

Respondent.

On Petition For A Writ Of Certiorari To the Supreme Court of South Carolina

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The proceeds of a personal injury lawsuit filed by petitioner (a resident of Virginia) were attached by respondent to collect a prior judgment. If petitioner had been a South Carolina resident, the proceeds would have been protected under S.C. Code § 15-41-30, which exempts from levy the proceeds of personal injury suits received by South Carolina residents but not by residents of other states.

The following questions are presented:

1. Does S.C. Code § 15-41-30 violate the privileges and immunities clause of Art. IV, Sec. 2 of the Constitution of the United States?

2. Does S.C. Code § 15-41-30 violate the constitutional right of interstate travel?

PARTIES

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BONNIE L. HICKLE,

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On Petition For A Writ Of Certiorari To the Supreme Court of South Carolina

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Opinion of the Supreme Court of South Carolina (September 20, 1993) is reported at ___ S.C. ___, 435 S.E.2d 870 (1993), and is reprinted at App. 1.

The Order of the state trial court (December 15, 1992) is reprinted at App. 5.

The Order of the Supreme Court of South Carolina denying a timely petition for rehearing (October 20, 1993) is reprinted at App. 10.

JURISDICTION

The Opinion of the Supreme Court of South Carolina was dated September 20, 1993, and a timely petition for rehearing was denied on October 20, 1993. This Court's certiorari jurisdiction arises under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Art. IV, Sec. 2 of the Constitution of the United States (first sentence):

> "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Subsection (11)(B) of S.C. Code 15-41-30:[1]

> "The following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by any court or bankruptcy proceeding:
>
> * * *
>
> (11) . . .
>
> (B) a payment on account of the bodily injury of the debtor or of the wrongful death or bodily injury of another individual of whom the debtor was or is a dependent."

[1] The entire section 15-41-30 is reprinted at App. 11.

STATEMENT OF FACTS

In 1990, respondent won a judgment against petitioner in the Court of Common Pleas of Beaufort County, in the amount of $32,512.61. Efforts to collect that judgment were unsuccessful.

In 1988, petitioner was in an auto accident in Beaufort County, and filed a suit in the Court of Common Pleas of Beaufort County to recover for her bodily injuries. *Hickle v. Cornell*, No. 91-CP-07-648. She settled that case in 1992.

Before the settlement, however, respondent became aware of petitioner's personal injury suit and moved to attach the proceeds to satisfy its prior judgment.

Petitioner was a resident of South Carolina at the time of the prior judgment, and if she had remained, the proceeds of her personal injury suit could not have been attached by respondent, because of S.C. Code § 15-41-30(11)(B).

However, by the time her personal injury case was settled, she had moved to Virginia, and was therefore not protected from attachment because § 15-41-30(11)(B) protects only South Carolina residents.

Petitioner raised in the trial court the argument that the restriction to South Carolina residents contained in § 15-41-30(11)(B) violated her rights under Art. IV, Sec. 2 of the Constitution of the United States. The trial court agreed, citing *Toomer v. Witsell*, 334 U.S. 385 (1948), and holding that petitioner was constitutionally entitled to be protected just as South Carolina residents are protected. In its opinion, the trial court specifically found that South

Carolina had no substantial reason for discriminating against residents of other states.

On appeal, the South Carolina Supreme Court reversed. The Supreme Court evaluated the state statute under Art. IV, Sec. 2 of the Constitution of the United States, but cited none of this Court's cases. It simply applied a "rational basis" test, and held that the State had a legitimate interest in discriminating for the purpose of "directing benefits to its citizens" and thus "protecting South Carolina residents from financial indigency."[2]

One Justice concurred on the grounds of possible inconsistency with the exemption law of Virginia (petitioner's home state), although in fact Virginia's law also exempts the proceeds of a personal injury recovery.

A timely rehearing petition was denied.

This petition followed.[3]

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[2] The trial court and the Supreme Court both quoted or cited Art. IV, Sec. 2, the "privileges and immunities clause," although they used the shorthand phrase "equal protection." In addition, the state courts used the statutory term "domicile" interchangeably with the terms "citizen" and "resident."

[3] The proceeds of petitioner's personal injury case were originally frozen by the trial court pending its decision, and the freeze was continued by the South Carolina Supreme Court pending appeal. Following the Supreme Court's decision, a Justice directed that the proceeds be paid to respondent but required respondent to post a bond to insure repayment in the event this Court should reverse.

REASONS FOR GRANTING THE WRIT

The writ of certiorari should be granted because the South Carolina Supreme court has decided the federal question in a way that conflicts with applicable decisions of this Court. Moreover, the constitutionality of this particular type of state statute raises an important question of federal law because residents-only exemption statutes appear to be widespread and growing throughout the United States.

1. The Privileges and Immunities Clause

The privileges and immunities clause, Art. IV. Sec. 2, has often been referred to as the fundamental glue that holds our Federal Union together – designed "to help fuse into one Nation a collection of independent, sovereign States." *Toomer v. Witsell*, 334 U.S. 385, 395 (1948):

> "The purpose of the Clause, as described in *Paul v. Virginia*, 8 Wall. 168 (1869), is 'to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and free egress from them; it insures to them in other States the same freedom possessed by citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute

> the citizens of the United States one people as this." [Hicklin v. Orbeck, 437 U.S. 518, 524 (1977).]

The importance of the privileges and immunities clause has been repeatedly underlined in cases old and new, besides those quoted above. *E.g., Corfield v. Coryell*, 6 Fed. Cas. 546 (C.C.E.D.Pa. 1825) (Bushrod Washington, J.); *Mullaney v. Anderson*, 342 U.S. 415 (1952); *United Bldg. & Constr. Trades v. Mayor & Council of the City of Camden*, 465 U.S. 208 (1984); *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985).

Some of these cases have involved subtle discriminations, for example, a complex interstate commuter tax. *Austin v. New Hampshire*, 420 U.S. 656 (1975).

In this case, however, there is no doubt about the discrimination, since the South Carolina statute says very plainly that its protections are for South Carolinians only. As the old saying goes, residents of other states need not apply.

Petitioner recognizes that the constitutional protection against interstate discrimination is not absolute. Recent cases have established a two-step inquiry: first, whether the subject of the discrimination is fundamental to the promotion of interstate harmony, and second, whether there is nevertheless a substantial state interest to which the discriminatory treatment is closely related. See *Supreme Court of Virginia v. Freedman*, 487 U.S. 59, 64-65 (1988). The statute involved here fails both these tests.

a. The fundamental interest. As to the first question, the leading example of a discrimination which was found

not to touch fundamental interstate relationships was the unequal elk hunting license fee which this Court upheld in *Baldwin v. Montana Fish & Game Comm'n*, 436 U.S. 371 (1978).

In this case, however, the discrimination affects the right of access to the courts, which is obviously one of the most fundamental interstate interests within the privileges and immunities clause. See *Corfield v. Coryell*, 6 Fed. Cas. at 552, where the rights protected from other states' interference specifically included the right "to institute and maintain actions of any kind in the courts of the state."[4]

Under the South Carolina statute, a South Carolina resident who has an auto accident or other personal injury is entitled to sue in the South Carolina courts and recover for his or her injuries, without a judgment creditor's intervention. A resident of any other state, however, who has an auto accident in South Carolina and sues in the courts of South Carolina, may not recover fully for personal injuries but rather is subject to having any recovery reduced or paid to a judgment creditor. That South Carolina simply abridges the right of access to the courts, rather than denying it entirely, does not minimize the violation. *Supreme Court of Virginia v. Freedman*, 487 U.S. at 66-67.

Nor are the consequences simply local. In this case, the judgment which respondent wished to collect was

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[4] The Corfield v. Coryell list also included the right "of a citizen of one state to pass through, or to reside in any other state," which is addressed below in Part 2.

obtained in a South Carolina court, but the South Carolina courts also enforce judgments obtained in any other state or federal court in the Nation,[5] and are in fact required to do so by the full faith and credit clause of the Constitution which is adjacent to the privileges and immunities clause in Article IV. Moreover, the type of suit involved here, a personal injury suit, is the classic type of "foreign" suit, *i.e.*, an automobile accident suit involving a person traveling outside his or her home state.[6]

b. South Carolina's state interest in the discrimination. In passing exemptions laws, South Carolina has determined that its interest in enforcing judgments is limited by its interests in keeping judgment debtors from destitution. This is the same interest recognized in numerous exemption laws and in the federal bankruptcy law. Accordingly, S.C. Code § 15-41-30 exempts – *for South Carolinians* – such things as a portion of the interest in the debtor's residence, car, household furnishings, tools,

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[5] Mitchell v. Mitchell, 266 S.C. 196, 222 S.E.2d 499 (1976) (foreign state court judgments); Integrity Ins. Co. v. Taylor, 295 S.C. 143, 367 S.E.2d 441 (Ct. App. 1988) (Foreign federal court judgments).

In this case, respondent's awareness of petitioner's personal injury lawsuit was made easier by the fact that it was filed in the same locale. However, the growing use of massive computer databases means that judgment creditors will soon be able to seek their remedies through instant access to court dockets nationwide.

[6] In this case, petitioner was a South Carolina resident at the time of the auto accident, and her proceeds would have been exempt if she had remained, but under South Carolina law she lost her exemption by moving to Virginia before judgment in her personal injury suit. See discussion below in Part 2.

medically prescribed aids, plus social security, disability, and veterans' benefits, as well as the personal injury proceeds involved in this case.

The South Carolina Supreme Court recently described the rationale for these exemptions: "to protect from creditors a certain portion of the debtor's property," *Cerny v. Salter*, ___ S.C. ___, 429 S.E.2d 809, 811 (1993). It went on to address the specific interest expressed by the personal injury proceeds exemption contained in subsection 11(b):

> "The purpose of a personal injury or wrongful death payment is to compensate the victim for something lost, rather than to provide a windfall award." [*Id.*]

There is no basis anywhere in this interest for finding a distinction between South Carolinians and people from other states.[7] Rather, the only distinction asserted by the Supreme Court was an interest in keeping its *own* citizens from becoming destitute. In other words, South Carolina asserts an interest in protecting its own, while beggaring citizens of all other states. That "interest" is exactly what the privileges and immunities clause bars. Nothing could

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[7] Of course, there is a general interest in seeing that proper judgments are paid. In this case, petitioner asserts that there are sound reasons why her judgment has not been paid, but those are really irrelevant, because South Carolina has made the judgment that paying judgments takes second place to avoiding destitution; the meaning of the privileges and immunities clause is that South Carolina cannot make that judgment for its residents while making the opposite judgment for non-residents.

be more destructive of interstate relationships and, ultimately, the strength of the federal system. See *Edwards v. California*, 314 U.S. 160 (1941).

This Court has held that a discrimination against residents of other states may be upheld where such other citizens are the direct source of a particular evil that the State is entitled to combat. *Toomer v. Witsell, supra*, at 398. Manifestly no such condition is shown here.[8]

The only interest asserted by South Carolina is, in effect, an interest in directly violating the privileges and immunities clause.[9] It cannot be justified.

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[8] Some distinctions in access to courts can be upheld for sound reasons, such as tolling statutes of limitations for out-of-staters. Likewise, some provisions of the exemption law may be constitutionally restricted to state residents, such as the historic "homestead" exemption on a personal residence, which by definition belongs only to a single principal residence of a person – so that a homestead exemption for a non-resident would be a contradiction in terms.

For petitioner to prevail, it is not necessary to hold that all other portions of the exemption law must be extended equally to non-state residents. It may be that some or many must be extended, but this case deals only with the fundamental interest of access to the courts in the form of the exemption for proceeds of a personal injury suit.

[9] Two other potential interests might be advanced on behalf of the State, but each one also fails.

First, the South Carolina Supreme Court cited one of its prior cases which had rejected a "privileges and immunities" claim based on this Court's "market participation" exception, Gary Concrete Prods. v. Riley, 285 S.C. 498, 331 S.E.2d 335 (1985), but that exception is inapposite here since it applies only to the State's own participation in business activities.

2. The Right to Travel

The right to interstate travel is the classic privilege and immunity created by the very act of joining the states together in a single Union. See *Corfield v. Coryell, supra.* The right to travel has developed along two separate lines, and both are involved here.

First, the classic right to travel involves the right of people simply to go from one state to another and travel through different states. *Crandall v. Nevada,* 6 Wall. 35 (1867). In this case, as noted above, South Carolina's refusal to exempt non-state residents means that every non-state resident who drives into or through the state (for example, on Interstate 95 from New York to Florida) is subject to a potential limitation on the right to sue if there is an auto accident. Nothing could be a clearer abridgement of the right to travel recognized in *Crandall.*

Second, in more recent years, the right to travel has come to comprehend the right to move one's residence from one state to another without being deprived of important benefits. E.g., *Memorial Hospital v. Maricopa*

Second, the concurring Justice below expressed concern about possible inconsistency with Virginia's exemption statute. This view might have supported a "choice of law" decision to apply *Virginia's* exemption law to petitioner, but the courts below did *not* make that choice of law, and if they had, petitioner would have been *exempt* because Virginia law has an exemption similar to South Carolina's. Va. Code § 34-28.1. (Whether a decision to give petitioner whatever benefits she is owed under Virginia law would be a constitutionally acceptable alternative to broadening the South Carolina statute to apply to her is unclear. See Ely, Choice of Law and the State's Interest in Protecting Its Own, 23 W.&M.L. REV. 173 (1981).)

County, 415 U.S. 250 (1974). In this case, petitioner was a resident of South Carolina when her auto accident took place. Under § 15-41-30, she could not move from South Carolina to any other state without losing her immunity that South Carolina thought was so important when she lived there. Nothing could be a clearer restriction on the "right to move" recognized in the recent cases.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be granted.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

American Service Corporation
of South Carolina, Appellant,

v.

Bonnie L. Hickle, Respondent.

Appeal from Beaufort County
Thomas Kemmerlin, Jr., Master in Equity

Opinion No. 23936
Heard June 8, 1993 – Filed September 20, 1993
REVERSED

CHANDLER, A.J.: American Service Corporation of South Carolina (American) appeals an Order holding that the Homestead Exemption Act, S. C. Code Ann. § 15-41-30(11) (B) (Supp. 1992)[1] deprives Respondent

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[1] Commonly referred to as the Homestead Exemption Statute, it reads, in part:

> The following real and personal property of a debtor *domiciled in this State* is exempt from attachment, levy, and sale under any mesne or final process issued by any court or bankruptcy proceeding.
> (11) The debtor's right to receive or property that is traceable to:
> (B) a payment on account of the bodily injury of the debtor or of the wrongful death or bodily injury of another individual of whom the debtor was or is a dependent. (Emphasis supplied).

Bonnie Hickle (Hickle), as a non-resident of this State, equal protection of the laws.[2]

We reverse.

FACTS

In September, 1990, American obtained a $32,000 judgment against Hickle, then a South Carolina resident. Subsequent to the judgment, Hickle became a Virginia resident; American has been unable to collect its judgment.

Thereafter, Hickle settled a personal injury lawsuit in South Carolina for $125,000. American seeks to attach proceeds of the settlement in satisfaction of its judgment.

Trial court awarded Hickle the benefit of the exemption, holding that "to allow American to seize the settlement proceeds would be a denial of equal protection."

ISSUE

Does the Homestead Exemption statute, in limiting the exemption for personal injury awards to South Carolina residents only, deprive non-residents of this State equal protection of the laws?

DISCUSSION

"In determining whether a statute violates the equal protection clauses of state and federal constitutions, we must give great deference to the classification passed by

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[2] U. S. Const. art. IV § 2; S. C. Const. art I, § 3.

the legislature, and the classification will be sustained against constitutional attack if it is not plainly arbitrary and there is 'any reasonable hypothesis' to support it." *Smith v. Smith*, 291 S.C. 420, 424, 354 S.E.2d 36, 39 (1987) [citing *Gary Concrete Products, Inc. v. Riley*, 285 S.C. 498, 331 S.E.2d 335 (1985)]. Equal protection is satisfied if: "(1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis." *Samson v. Greenville Hospital System*, 295 S.C. 359, 364, 368 S.E.2d 665, 667 (1988).

Here, the classification of residents versus non-residents satisfies the three-prong test in *Samson*: (1) it is reasonably related to the legislative purpose of protecting South Carolina residents from financial indigency; (2) the members of the classes are treated alike since all residents are entitled to the exemption; and, (3) the classification is reasonably based upon South Carolina's legitimate interest in preventing its citizens from becoming dependent upon the State for support.

The fact that a classification results in some inequity does not render it unconstitutional. *Foster v. S.C.D.H.P.T.*, *306* S.C. *519*, *527*, 413 S.E.2d 31, 36 (1992). A statute enacted pursuant to the legislature's powers is presumptively constitutional. *Nichols v. South Carolina Research Authority*, 290 S.C. 415, 351 S.E.2d 155 (1986).

In the recent case of *Cerny v. Salter*, ___ S.C. ___, 429 S.E.2d 809 (1993), we noted that the rationale for homestead exemptions is "to protect from creditors a certain portion of the debtor's property." [Citing *Elliott v.*

Mackorell, 19 S.C. 238 (1883)]. Moreover, this Court has previously held that a classification between resident and non-resident vendors is rationally related to the legitimate state interest of directing benefits to its citizens. *See Gary Concrete Products, Inc. v. Riley,* 285 S.C. 498, 331 S.E.2d 335 (1985).

We find no equal protection violation. The judgment below is

REVERSED.

HARWELL, C.J., FINNEY and MOORE, JJ., concur. TOAL, A.J., concurring in result in separate opinion.

Toal, A.J. I concur in result with the majority. Under equal protection, the classification must bear a reasonable relation to the legislative purpose. *Gary Concrete Products Inc. v. Riley,* 285 S.C. 498, 506, 331 S.E.2d 335, 340 (1895) (Gregory and Chandler dissenting). The limitation of the exemptions to those domiciled in South Carolina prevents debtors from receiving the benefits of South Carolina exemption statute in addition to the exemptions of their home state. Further, the exemptions provided in the debtor's home state may be inconsistent with those provided for South Carolina residents. Accordingly, I agree that the limitation to South Carolina residents is not plainly arbitrary and, therefore, does not violate equal protection.

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT AMERICAN SERVICE CORPORATION, Plaintiff, v. BONNIE L. HICKLE, Defendant,	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 90-CP-07-917 ORDER [Filed Dec. 7, 1992]

The Plaintiff, American Service Corporation of South Carolina, hereafter "American" obtained a judgment in the amount of $32,512.61 against the Defendant, Bonnie Hickle, hereafter "Hickle", then a resident of South Carolina, on September 7, 1990. The judgment remains unpaid. Since the judgment was obtained against Hickle she has moved and become a citizen and resident of Virginia. American's attempts to collect on the judgment in South Carolina have resulted in a *nulla bona* return.

Hearing that Hickle was in the process of settling a personal injury suit in Beaufort County, South Carolina, American petitioned me for an *ex parte* temporary restraining order directed at the attorneys representing the Defendant in the personal injury suit in which Hickle is the Plaintiff to temporarily prevent them from dispersing the settlement proceeds[1] to Hickle. I granted the

[1] The settlement was in excess of American's judgment, even after one takes out one-third for attorneys fees and adds two years interest to the judgment.

petition and issued the temporary restraining order along with a Rule to Show Cause why it should not be converted into an injunction *pendente lite.*

On the return to the rule I find myself confronted with a Constitutional question. The attorneys representing Hickle have intervened and point to Section 15-41-30 *Code of Laws of South Carolina, 1976,* which reads:

> The following property of a debtor *domiciled in this State* is exempt from . . . levy . . . under . . . any . . . process issued by any court . . . (11) the debtors right to receive or property that is traceable to: . . .
>
> (B) a payment on account of the bodily injury of the debtor . . . [emphasis added]

The attorney representing American points out that Hickle is *not* "domiciled" in South Carolina. And in return the attorneys for Hickle assert the unconstitutionality of the statute. There is a similar statute in Virginia, so if Hickle was being paid in Virginia the funds could not be reached. Only the freak circumstance of having moved from South Carolina between the accident and the settlement subjects the settlement proceeds to seizure by American under the statute. Article IV, Section 2, of the U.S. Constitution provides: "The citizens of each state shall be entitled to all Privileges and Immunities of citizens in the several states." Article 1, Section 3, of the S.C. Constitution similarly provides: "The privileges and immunities of the citizens of this state and of the United States under this Constitution shall not be abridged . . . " These two clauses prohibit states from discriminating against non-residents and are "designed to ensure to a citizen of state A who ventures into state B the same

privileges which the citizens of state B enjoy." *Toomer v. Witsell*, 334 U.S. 385, 684 S.Ct. 1156, 92 L.Ed. 1460 (1948).

The facts in *Toomer v. Witsell, supra,* were that South Carolina required non-residents to pay a fee many times higher than that paid by South Carolina residents for a license to shrimp within the three mile limit. The United States Supreme Court pointed out that although the Privileges and Immunities Clause "does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it . . . [i]t does bar discrimination against Citizens of other states where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of another state."

Thus the problem reduces to: is there any substantial reason for the discrimination here against persons not domiciled in South Carolina? A close look at the South Carolina statute, Section 15-41-30 which exempts from seizure certain properties of South Carolina debtors, reveals the reason why it protects from seizure only the property of South Carolina debtors. Every state has its own homestead exemptions. While they vary somewhat from state to state, they all have as general purpose to give a debtor certain basic exemptions as a nest egg for the future so as to prevent him and his family from becoming so destitute as to join the welfare rolls. The statute lists various categories of exempt property, i.e., $5,000 real property exemption in a residence, $1200 equity in an automobile, $2500 in household goods, $500 in jewelry, $750 in tools of his trade, etc. It makes sense for these exemptions to only apply to local debtors, not to out of state debtors – who, presumably claim similar

amounts in their home states. Without the limitation, a debtor could claim homestead exemptions in a number of states in which he owned property and wind up with a sizeable estate and yet defeat creditors. It is only fair that a Virginia resident who gets his Virginia exemptions of the type outlined above not be allowed to claim similar lists of exemptions in North Carolina, South Carolina, Georgia and Florida and other states where he may have property. He would be double-dipping. As to exemptions of this type there is clearly a substantial reason for the discrimination or apparent discrimination against the non-resident.

But there is under the statute another set of exemptions including an award under a crime victim's reparation law and a payment on account of the bodily injury of the debtor, the one I am here concerned with. Here there is no substantial reason for the discrimination. The Virginia resident is not going to double dip by getting a similar exemption in Virginia; she only gets the same settlement exempted that a South Carolina citizen could get exempted. I therefore conclude that to apply the statute so as to allow American to seize the settlement proceeds would be a denial of equal protection.

In so ruling I do not overlook to case of *Bonebrake v. Morrow*, 183 S.C. 170, 190 S.E. 506 (1937), but as I read that case, it applies to cases of the first category I considered above.

I am not unmindful that my ruling probably deprives American of its only chance it will ever have of collecting a debt honestly owed by Hickle to it. I also am not unaware that when the temporary injunction is dissolved

and the settlement proceeds paid to Hickle it will be too late for American, if I'm wrong. To prevent this and give American a chance to get emergency relief from the Supreme Court if I am wrong, I continue the temporary injunction until December 18, 1992, at 3:00 o'clock p.m. at which time it will cease so that the settlement can be consummated free of the threat of seizure by American.

AND IT IS SO ORDERED.

/s/ Thomas Kemmerlin, Jr.
Thomas Kemmerlin, Jr.,
Master In Equity and
Special Circuit Judge for
Beaufort Common Pleas

Beaufort, South Carolina

December 3, 1992.

The Supreme Court of South Carolina

October 20, 1993

Re: American Service Corporation v. Bonnie L. Hickle

"Motion for rehearing is denied.

s/	David W. Harwell	C.J.
s/	A. Lee Chandler	A.J.
s/	Ernest A. Finney, Jr.	A.J.
s/	Jean H. Toal	A.J.
s/	James E. Moore	A.J.

October 20, 1993."

§ 15-41-30. Property exempt from attachment, levy, and sale.

The following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by any court or bankruptcy proceeding:

(1) The debtor's aggregate interest, not to exceed five thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor, except that the aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed ten thousand dollars. If there are multiple owners of such a living unit exempt as a homestead, the value of the exemption of each individual owner may not exceed his fractional portion of ten thousand dollars.

(2) The debtor's interest, not to exceed one thousand two hundred dollars in value, in one motor vehicle.

(3) The debtor's interest, not to exceed two thousand five hundred dollars in aggregate value in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed five hundred dollars in value, in jewelry held primarily

for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in cash and other liquid assets to the extent of a value not exceeding one thousand dollars, except that this exemption is available only to an individual who does not claim a homestead exemption. The term "liquid assets" includes deposits, securities, notes, drafts, unpaid earnings not otherwise exempt, accrued vacation pay, refunds, prepayments, and other receivables.

(6) The debtor's aggregate interest, not to exceed seven hundred fifty dollars in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value four thousand dollars less any amount of property of the estate transferred in the manner specified in Section 542(d) of the Bankruptcy Code of 1978, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive:

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veteran's benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance;

(E) a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, unless

(i) the plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;

(ii) the payment is on account of age or length of service; and

(iii) the plan or contract does not qualify under Sections 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409).

(11) The debtor's right to receive or property that is traceable to:

(A) an award under a crime victim's reparation law;

(B) a payment on account of the bodily injury of the debtor or of the wrongful death or bodily injury of another individual of whom the debtor was or is a dependent;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date

of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

Supreme Court, U.S.
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No. 93-1167

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Supreme Court of the United States

October Term, 1993

BONNIE L. HICKLE,

Petitioner,

v.

AMERICAN SERVICE CORPORATION OF SOUTH CAROLINA,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of South Carolina

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION

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ARGUMENT SUMMARY

A state is entitled to limit the exemptions from levy and execution to its citizens as such exemptions are not among the privileges and immunities that must be extended to the citizens of all states. Accordingly the unanimous decision of the South Carolina Supreme Court in this case should not be reviewed.

ARGUMENT

I. Privileges and Immunities

The writ of certiorari in this case should be denied as the unanimous decision of the South Carolina Supreme Court is in accordance with the applicable decisions of this Court, and is in conformity with other state appellate court decisions holding that there is no constitutional requirement that a state extend its exemptions to the residents of all states.

In *Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1988) this Court applied a two-step inquiry in determining whether citizenship or residency classification is violative of privileges and immunities protection. "First, the activity in question must be 'sufficiently basic to the livelihood of the Nation' . . . as to fall within the purview of the Privileges and Immunities Clause . . . " *Friedman*, 487 U.S. at 64 (1988) quoting *United Building and Construction Trades Council v. Mayor and Council of Camden*, 465 U.S. 208, 221-222 (1984); and *Baldwin v. Montana Fish and Game Commission*, 436 U.S. 371, 388 (1978). "Second, if the challenged restriction deprives nonresidents of a protected privilege, we will invalidate it only if we conclude that the restriction is not closely related to the advancement of a substantial state interest." *Friedman*, 487 U.S. at 65 (citing *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 at 284). Limiting exemptions from levy and execution to individuals domiciled in the state does not violate either step.

First, the availability of exemptions is not so basic as to fall within the purviews of the Privileges and Immunities Clause. This Court has recognized that exemption

laws ". . . are part of the remedy and subject to the law of the forum." *Chicago, R. I. and P. R. Co. v. Campbell,* 174 U.S. 710, 717 (1899). Further, it has been recognized that states could discriminate between residents and nonresidents in their pursuit of claims in the courts of the state. In *Central Loan and Trust Co. v. Campbell Commission Co.,* 173 U.S. 84 (1898) the court upheld a state statute which required posting a bond in order to attach property belonging to a state resident while not requiring a bond where the property of a nonresident was involved. It was recognized in *Central Loan* that it was an " . . . elementary doctrine . . . that for the purposes of the remedy of attachment, the legislative authority of a state or territory may classify residents in one class and nonresidents in another. . . . " *Central Loan,* 173 U.S. at 98. This court has further upheld the application of the statute of limitations to nonresident Plaintiffs while not to resident plaintiffs, *Canadian Northern Ry. Co. v. Eggen,* 252 U.S. 553 (1920); allowed the tolling of the statute of limitations for resident but not nonresident Plaintiff, *Chemung Canal Bank v. Lowery,* 93 U.S. 72 (1876) and, requiring citizens of another state to post a bond for costs prior to using state court for suit. *Blake v. McClung,* 172 U.S. 239 (1898) later app. 176 U.S. 59 (1898).

Second, the exclusion of nonresidents from its exemption laws is in furtherance of legitimate state interests. In the present case the South Carolina Supreme Court recognized that ". . . the classification is reasonably based upon South Carolina's legitimate interest in preventing its citizens from becoming dependent upon the state for support." *American Service Corporation of South Carolina v. Bonnie L. Hickle,* 435 S.E.2d 870, at 871 (1993).

Furthermore, as recognized in Justice Toal's concurring opinion in the present case, because every state has its own exemption laws, not extending the exemptions available to South Carolina residents prevents nonresident debtors from receiving benefits of the South Carolina exemptions as well as those of the state of their residence. *American Service,* 435 S.E.2d at 871-872.

The Petitioner has not cited any state appellate decisions holding that the exclusion of nonresidents from the state's exemption laws was in violation of a debtor's constitutional rights. However, a number of states addressing this issue have upheld the exclusion of nonresident debtors from their exemption laws. See *Smith v. Georgia Granite Corporation,* 186 Ga. 634, 198 S.E. 772 (1938), transferred 194 S.E. 908, 57 Ga. App. 245 (1938); *First Union National Bank v. Rolfe,* 83 N.C. App. 625, 351 S.E.2d 117 (1986), later app., 90 N.C. App. 85, 367 S.E.2d 367 (1988); *Seay v. Palmer,* 93 Ala. 381, 9 So. 601 (1891); *Person v. Williams-Echols Dry Goods Co.,* 113 Ark. 467, 169 S.W. 223 (1914); and *Post v. Bird,* 28 Fla. 1, 9 So. 888 (1891).

II. The Right to Travel

South Carolina's exclusion of nonresidents from its statutory exemptions does not impede or impair the right to travel. The Petitioner is free to travel to, through and from South Carolina, and the inability to take advantage of the exemptions made available to South Carolina residents in no way impedes this right.

The South Carolina exemption statute does not impose any requirement that residency be established over a period of time. Nothing precludes the Petitioner

from establishing residency in South Carolina, or precludes the Petitioner from obtaining the benefits of the South Carolina exemptions immediately upon establishing South Carolina residency. If a person moves from one state to another, the right to travel does not require the first state to continue to pay welfare benefits. *Califano v. Torres*, 435 U.S. 1 (1978) (per curiam). Similarly, a state should not be constitutionally required to make its exemptions available to a person once he is no longer domiciled in the state.

CONCLUSION

For the foregoing reasons the writ of certiorari should be denied.

Respectfully submitted,

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REPLY BRIEF IN SUPPORT OF CERTIORARI

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REPLY BRIEF IN SUPPORT OF CERTIORARI

Respondent agrees with Petitioner that the validity of South Carolina's discrimination under the privileges and immunities clause depends on two questions, but disagrees as to the answers to those two questions.

1.a. Respondent first describes the subject matter of the discrimination in this case as "exemptions," and argues that this subject "is not so basic as to fall within the purviews of the Privileges and Immunities Clause." Op. Cert., p. 2. The sole support for this argument, however, is one paragraph and four cases of this Court which in fact hold to the contrary.

The subject of "exemptions" is actually part of the overall subject of access to courts, which is indisputably a fundamental privilege and immunity. This is confirmed by all four cases cited by Respondent, each of which dealt with different aspects of the issue of access to courts (such as attachments, bonds, and statutes of limitation). In each case, this Court followed the same two-part analysis used in recent cases (albeit not so explicitly), and in each case the Court treated the issue as one involving access to courts, characterized the issue as fundamental, and then went to the second question, i.e., whether there was a sufficient state justification for different treatment of citizens and non-citizens.

b. In several of the cases, this Court found a sound reason for different treatment, and upheld the statute. However, in the case most nearly like ours, the statute was struck down. In that case, *Blake v. McClung*, 172 U.S. 239 (1898), a Tennessee statute dealt with distribution of corporate assets to satisfy debts, and gave citizen creditors priority ahead of non-citizen creditors. In other words, the statute provided that in some cases, a citizen stood a better chance of collecting a judgment than a non-citizen. This Court struck the statute down, saying that such "discrimination against citizens of other states" was "repugnant" to the privileges and immunities clause. 172 U.S. at 254.

Here, likewise, South Carolina says that a citizen may collect a judgment in situations where a non-citizen may not. Under *Blake v. McClung*, this is assuredly an aspect of the fundamental privilege of access to the courts.

Moreover, the later history of *Blake v. McClung* is even clearer. On remand in that case, the Tennessee court still gave citizen creditors a slight advantage over non-citizens. This Court reversed again, holding that its prior decree required the state court to "see to it that no advantage accrued to Tennessee creditors over Ohio creditors." *Blake v. McClung*, 176 U.S. 59 (1900). This Court underlined repeatedly that out-of-state and in-state creditors were to share "upon terms of equality, in all respects," and that "no decree giving to the latter privileges or advantages that are denied to the former is . . . consistent with the Constitution of the United States." 176 U.S. at 68.

2. If the discrimination touches a fundamental matter, as here, the inquiry turns to whether there is a substantial state interest involved and whether the type and extent of the discrimination is closely tied to the advancement of that state interest. This Court has repeatedly said that different treatment will not be upheld "unless there is something to indicate that non-citizens constitute a peculiar source of the evil at which the statute is aimed." *Hicklin v. Orbeck*, 437 U.S. 518, 525 (1978).

Here Respondent does no more than repeat the South Carolina Supreme Court's assertion of a state interest in keeping its citizens from becoming dependent upon the state for support. Op. Cert., p. 3.[1] With all due respect, Petitioner is unaware of any case, ever, which has judged this all-encompassing "interest" to justify discrimination

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[1] Respondent also says non-residents must be prevented from "double-dipping" into the benefits of two States, but this is a red herring because the ruling below prevents Petitioner from receiving the benefits of *either* State's exemptions.

against non-citizens. If it did, every difference could be justified, even different tax rates, and even the preference for resident creditors which was rejected in *Blake v. McClung*.

True, some cases have supported different treatment based on states' interests in preserving scarce resources, such as elk (*Baldwin v. Montana Fish & Game Comm'n*, 436 U.S. 371 (1978)), but that can hardly be equated with Respondent's all-encompassing argument.

The interest thus asserted is exactly what the privileges and immunities clauses bars. South Carolina may profess indifference to whether citizens of other states become dependent upon those states for support, but the privileges and immunities clause does not recognize that "interest" as a basis for having different laws for citizen and foreigner. It is no different from the general financial preference for citizens struck down as long ago as *Blake v. McClung* and as recently as *Hicklin v. Orbeck*.

Respectfully submitted,

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